

# SOLICITOR

AO 120 (Rev. 2/99)

<b>TO: Mail Stop 8</b> <b>Director of the U.S. Patent &amp; Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>DEC 22 2008</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>OBJECTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 08-05624 JL	DATE FILED 12/17/08	U.S. DISTRICT COURT Northern District of California, San Francisco Division
PLAINTIFF ACER AMERICA CORP, ET AL.		DEFENDANT WI-LAN, INC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,549,759		
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In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY		
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK Richard W. Wicking	(BY) DEPUTY CLERK Gloria Acevedo	DATE December 19, 2008
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Copy 1—Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to Commissioner  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

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Attorneys for Plaintiff

DELL INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ACER AMERICA CORP., APPLE INC.,  
DELL INC., and GATEWAY, INC.,

Plaintiffs,

v.

WI-LAN, INC.,

Defendant.

Case No.

COMPLAINT FOR DECLARATORY  
JUDGMENT

DEMAND FOR JURY TRIAL

C08 05624

JL

1 Plaintiffs Acer America Corp. ("Acer America"), Apple Inc. ("Apple"), Dell Inc.  
2 ("Dell"), and Gateway, Inc. ("Gateway") (collectively, "Plaintiffs"), for their Complaint against  
3 Wi-LAN, Inc. ("Wi-LAN"), hereby allege as follows:

#### 4 NATURE OF THE ACTION

5 1. This is an action for a declaratory judgment of non-infringement, invalidity, and  
6 unenforceability of United States Patent No. 6,549,759 (the "'759 patent") pursuant to the  
7 Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the patent laws of the United States, 35  
8 U.S.C. § 100 *et seq.*, and for such other relief as the Court deems just and proper.

#### 9 INTRADISTRICT ASSIGNMENT

10 2. This action includes patent-based declaratory judgment claims arising in  
11 connection with conduct occurring in or directed to Santa Clara County. This action is related to  
12 another action pending in the San Jose Division, *Intel Corporation v. Wi-LAN, Inc.*, Case No.  
13 5:08-cv-04555-JW.

#### 14 PARTIES

15 3. Plaintiff Acer America is an entity organized and existing under the laws of  
16 California, with its principal place of business at 333 West San Carlos Street, Suite 1500, San  
17 Jose, California 95110.

18 4. Plaintiff Apple is a corporation organized and existing under the laws of  
19 California, with its principal place of business at 1 Infinite Loop, Cupertino, California 95014.

20 5. Plaintiff Dell is a corporation organized and existing under the laws of the State of  
21 Delaware and having its principal place of business at One Dell Way, Round Rock, Texas 78682.

22 6. Plaintiff Gateway is an entity organized and existing under the laws of Delaware,  
23 with its principal place of business at 7565 Irvine Center Drive, Irvine, California 92618.

24 7. On information and belief, defendant Wi-LAN, Inc., is a corporation organized  
25 and existing under the laws of Canada and having its principal place of business at 11 Holland  
26 Avenue, Suite 608, Ottawa, Ontario, Canada.

27 8. As alleged herein, Wi-LAN has engaged in various acts in and directed to  
28 California.

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14. The Plaintiffs have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '759 patent.

15. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

16. A judicial declaration is necessary and appropriate so that the Plaintiffs may ascertain their rights regarding the '759 patent.

**COUNT II**

**(Declaration Of Invalidity Of U.S. Patent No. 6,549,759)**

17. The Plaintiffs repeat and reallege the allegations in paragraphs 1-16 as though fully set forth herein.

18. The '759 patent is invalid for failure to meet the conditions of patentability and/or otherwise to comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, 112 and 132.

19. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

20. A judicial declaration is necessary and appropriate so that the Plaintiffs may ascertain their rights regarding the '759 patent.

**COUNT III**

**(Declaration Of Unenforceability Of U.S. Patent No. 6,549,759)**

21. The Plaintiffs repeat and reallege the allegations in paragraphs 1-20 as though fully set forth herein.

22. On information and belief, individuals subject to the duty of candor under 37 C.F.R. § 1.56 (“Applicants”) engaged in inequitable conduct by withholding or misstating material information with intent to deceive the United States Patent and Trademark Office (“USPTO”) in connection with prosecuting the ‘759 patent, rendering the ‘759 patent unenforceable.

1           23.     On information and belief, during prosecution of the '759 patent, Applicants were  
2 aware of prior art that they knew was material to patentability, including prior public disclosures  
3 material to patentability that they deliberately failed properly to disclose to the USPTO with  
4 intent to deceive.

5           24.     For example, on or around July 7, 2000, a document entitled "Media Access  
6 Control Layer Proposal for the 802.16.1 Air Interface Specification," was submitted to the  
7 802.16 MAC Subgroup by Glen Sater, of Motorola, and Kenneth L. Stanwood, of Ensemble  
8 Corporation. Kenneth L. Stanwood is a named inventor on the '759 patent.

9           25.     Applicants' public disclosures, including those described above, were material to  
10 the patentability of the application that issued as the '759 patent. On information and belief,  
11 during prosecution of the application that issued as the '759 patent, with intent to deceive the  
12 USPTO, Applicants failed to disclose these public disclosures to the USPTO. Under Wi-LAN's  
13 improper and incorrect apparent interpretations of the '759 patent's claims, these disclosures  
14 constitute prior art that render the claims of the '759 patent invalid under 35 U.S.C. §§ 102  
15 and/or 103.

16           26.     As a result of the acts described in the foregoing paragraphs, there exists a  
17 substantial controversy of sufficient immediacy and reality to warrant the issuance of a  
18 declaratory judgment.

19           27.     A judicial declaration is necessary and appropriate so that the Plaintiffs may  
20 ascertain their rights regarding the '759 patent.

21                               **PRAYER FOR RELIEF**

22           **WHEREFORE**, the Plaintiffs respectfully request that judgment be entered in their favor  
23 and pray that the Court grant the following relief:

24           A.     A declaration that each of the Plaintiffs has not infringed, either directly or  
25 indirectly, any valid and enforceable claim of the '759 patent;

26           B.     A declaration that the claims of the '759 patent are invalid;

27           C.     A declaration that the '759 patent is unenforceable;

28           D.     An order declaring that each of the Plaintiffs is a prevailing party and that this is

1 an exceptional case, awarding each of the Plaintiffs its costs, expenses, disbursements, and  
2 reasonable attorney fees under 35 U.S.C. § 285 and all other applicable statutes, rules and  
3 common law; and

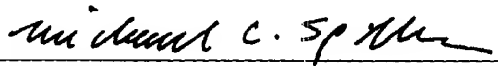
4 E. Such other and further relief as the Court may deem just and proper.

5 **JURY DEMAND**

6 The Plaintiffs hereby respectfully demand a trial by jury on all issues and claims so  
7 triable.

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9 Dated: December 17, 2008

Respectfully submitted,

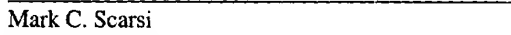
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17 ACER AMERICA CORP. and GATEWAY, INC.

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19 Dated: December 17, 2008

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26 APPLE INC.

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2 reasonable attorney fees under 35 U.S.C. § 285 and all other applicable statutes, rules and  
3 common law; and

4 E. Such other and further relief as this Court may deem just and proper.

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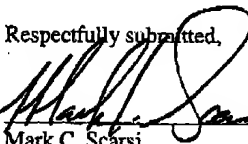
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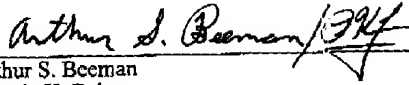
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